

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

back when he picked up a parcel while in the performance of duty. He stopped work on December 17, 2019 and returned on December 24, 2019.

By decision dated September 8, 2020, OWCP accepted the condition of right rotator cuff capsule sprain, initial encounter.

In support of his disability claim, appellant submitted a June 6, 2020 report by Dr. Jonathan L. Ben-Zev, an orthopedic surgeon, who diagnosed right shoulder pain, unspecified chronicity, and ordered diagnostic testing.

In a June 8, 2020 right shoulder magnetic resonance imaging (MRI) scan report, Dr. Stephen B. Huebner, a Board-certified diagnostic radiologist, provided an impression of high-grade supraspinatus tendon tear, including at least two areas of full-thickness tear and mild muscle atrophy, moderate infraspinatus tendinosis and possible small partial thickness tear and moderate subscapularis tendinosis, moderate acromioclavicular (AC) osteoarthritis, and minimal glenohumeral arthritis and small tear of the superior glenoid labrum.

An August 31, 2020 operative report by Dr. Scott G. Kaar, an attending Board-certified orthopedic surgeon, provided preoperative and postoperative diagnoses of right shoulder rotator cuff tear involving the supraspinatus tendons, and AC joint arthritis. Dr. Kaar performed right shoulder arthroscopic rotator cuff repair, subacromial decompression, and distal clavicle excision. In progress notes dated September 15 and October 13, 2020, he provided an impression that appellant was six weeks status post right shoulder arthroscopic rotator cuff repair, subacromial decompression, and distal clavicle excision. Dr. Kaar noted appellant's physical restrictions.

Appellant filed a claim for compensation (Form CA-7) for disability from work for the period May 3, 2020 and continuing.

OWCP, in a November 30, 2020 development letter, informed appellant of the deficiencies in his claim and requested that he submit medical evidence to support his reported surgery and disability during the period claimed causally related to the accepted December 12, 2019 employment injury. It afforded him 30 days to respond.

In response, appellant submitted an undated statement in which he described his December 12, 2019 employment injury and resultant medical treatment. He also submitted medical evidence.

In progress notes dated June 11, 2020, Dr. Jeffrey C. Faron, a Board-certified internist, noted appellant's left shoulder pain. He indicated that there were no contraindications for appellant's planned right shoulder surgery.

An additional progress note dated August 11, 2020 and letters dated September 15, October 16, and December 11, 2020 by Dr. Kaar noted an impression of full-thickness supraspinatus tear with, mild retraction, mild supraspinatus atrophy and partial thickness tearing involving the supraspinatus, subscapularis tendinosis, fluid along the biceps, and moderate AC joint arthrosis. Additionally, he noted that appellant was doing well status post appellant's August 31, 2020 arthroscopic right shoulder surgery. In the October 16, 2020 letter, Dr. Kaar

advised that appellant was unable to work beginning March 26, 2020 and continuing following his August 31, 2020 surgery.

OWCP subsequently received additional medical evidence. In letters dated October 13 and November 24, 2020 and January 5, 2021, Dr. Kaar reiterated that appellant was status post arthroscopic right shoulder surgery and was “doing well.” In the January 5, 2021 letter, he advised that appellant would remain off work until his next visit. Dr. Kaar, in a March 5, 2021 letter, opined that appellant’s full-thickness rotator cuff tear and AC joint arthrosis and resultant August 31, 2020 surgery were directly related to appellant’s December 2019 employment injury.

In a March 11, 2021 letter, Dr. Karr restated his opinion that appellant’s right rotator cuff and bicep tear and resultant August 31, 2020 surgical repair was due to his December 12, 2019 employment injury. He advised that appellant could return to full-duty work without restrictions as of March 9, 2021.

OWCP, by decision dated July 15, 2021, denied appellant’s claim for disability from work for the period May 3 through August 30, 2020 because the medical evidence of record was insufficient to establish disability.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>4</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>5</sup>

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>6</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> See *L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>5</sup> See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>6</sup> *Id.* at § 10.5(f); see e.g., *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>7</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>8</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the employee.<sup>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period May 3 through August 30, 2020, causally related to his accepted December 12, 2019 employment injury.

In support of his disability claim, appellant submitted progress notes and letters from Dr. Kaar. Dr. Kaar's August 11, 2020 progress note provided an impression of full-thickness supraspinatus tear with, mild retraction, mild supraspinatus atrophy and partial thickness tearing involving the supraspinatus, subscapularis tendinosis' fluid along the biceps, and moderate AC joint arthrosis. He also provided an impression that appellant was doing well status post arthroscopic right shoulder surgery. However, Dr. Kaar offered no opinion regarding appellant's disability status during the period May 3 through August 30, 2020. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.<sup>11</sup> In an October 16, 2020 letter, Dr. Kaar noted appellant's inability to work commencing March 26, 2020 and continuing following his authorized August 31, 2020 surgery. While he noted appellant's inability to work on the claimed dates, he did not provide any medical reasoning to support his opinion on disability nor did he attribute appellant's disability to the accepted December 12, 2019

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<sup>7</sup> *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>8</sup> *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>9</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 4.

<sup>11</sup> *See B.M.*, Docket No. 20-0826 (issued May 10, 2021); *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

employment injury.<sup>12</sup> Dr. Kaar's remaining letters dated September 15, 2020 through March 5, 2021 do not address appellant's inability to work on the claimed dates.<sup>13</sup> For these reasons, the Board finds that his letters and progress note are insufficient to establish appellant's disability claim.

Appellant also submitted progress notes by Dr. Faron dated June 11, 2020. The Board finds that Dr. Faron's progress notes are of no probative value as they did not address appellant's disability status and are therefore insufficient to establish the disability claim.<sup>14</sup>

Likewise, Dr. Ben-Zev's June 6, 2020 report diagnosed right shoulder pain, unspecified chronicity, but does not offer an opinion regarding appellant's disability status during the claimed period.<sup>15</sup> For this reason, the Board finds that this evidence from Dr. Ben-Zev is insufficient to establish appellant's disability claim.

The record also contains diagnostic reports. However, the Board has long held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.<sup>16</sup> For this reason, the Board finds that the diagnostic reports of record are insufficient to establish appellant's disability claim.

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.<sup>17</sup> Because appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related total disability during the claimed period due to his accepted condition, the Board finds that he has not met his burden of proof to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>12</sup> *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0154 (issued June 9, 2017).

<sup>13</sup> *M.A.*, *id.*; *C.S.*, Docket No. 19-1279 (issued December 30, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *see also William A. Archer, supra* note 10 (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

<sup>14</sup> *S.S.*, Docket No. 21-0763 (issued November 12, 2021); *M.V.*, Docket No. 20-0872 (issued January 27, 2020); *P.R.*, Docket No. 20-0596 (issued October 6, 2020); *M.L.*, Docket No. 18-1058 (issued November 21, 2019); *D.J.*, Docket No. 18-0200 (issued August 12, 2019).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *See T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>17</sup> *Supra* note 5.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish disability from work for the period May 3 through August 30, 2020, causally related to his accepted December 12, 2019 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board